

The Case Against Tuition Tax Credits

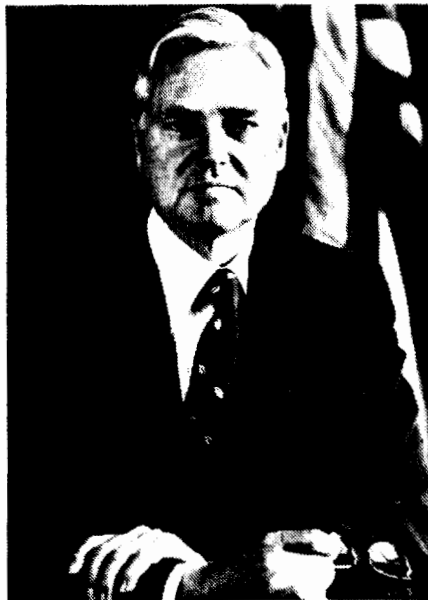
by Ernest F. Hollings

Senator Hollings's galaxy of objections is summed up in his statement that the Packwood-Moynihan scheme would "destroy the diversity and genius of our system of public education."

In August, on the floor of the U.S. Senate, public education ran head-on into the Packwood-Moynihan tuition tax credit scheme. In my opinion, the future of American education hinged on the outcome of this confrontation. Careful study convinced me that this proposal would turn our nation's education policy on its head, benefit the few at the expense of many, proliferate substandard segregation academies, add a sea of red ink to the federal deficit, violate the clear meaning of the First Amendment to the Constitution, and destroy the diversity and genius of our system of public education. Fortunately, my Senate colleagues agreed with me and defeated the inclusion of tuition tax credits for elementary and secondary education by a vote of 56-41.

My colleague from New York proposed tax credits for private elementary and secondary education upon the assumption that the government has an equal duty to both public and private schools, and he charges that "the federal government has systematically organized its activities in ways that contribute to the decay of nonpublic education."

Let us be clear at the outset that the duty is *not* equal. The government's duty to the public is to provide public schools. The duty of the government toward private schools is to leave them alone. This is fundamental. Now comes the Packwood-



Senator Ernest F. Hollings

Moynihan plan, and the duty to leave the private alone is suddenly inverted to the duty to provide for them.

And provide it would! Today the average federal subsidy to the individual public school pupil is \$128.* The private school student is helped too, through

*Note the difference between this figure and Senator Moynihan's figure (\$352). Table 2, *Revenues and Expenditures for Public Elementary and Secondary Education, 1975-76*, a publication of the National Center for Education Statistics, reports that per-pupil revenues from federal sources for public elementary and secondary education for the fiscal year ending June 30, 1976, averaged approximately \$150. HEW Secretary Joseph Califano testified at the House hearings on tax credits last February that the average amount of federal money per student in public schools now averages about \$128. A comparable figure for parochial and private schools was between \$50 and \$70, according to Califano. — *The Editor*

federal assistance in providing instructional materials, library resources, guidance and testing programs, and so on, at an average per-pupil expenditure of \$40. (It should be noted that increases are contained in the recently passed Elementary and Secondary Education Act Amendments for both public and private schools, and improvements in "by-pass" mechanisms will further assure that privates will receive their fair share of federal aid.) The original Packwood-Moynihan proposal would have completely upended these proportions by providing up to \$500 for the private school student — over four times what is given for the public school child. When the Senate considered it, the proposal was pared to \$250. Can it really be in the public interest to provide quadruple, or in the final instance double, the aid to those attending private schools?

Not only is the amount of aid proposed disproportionate, but the kind of aid is radically different. Federal assistance consists primarily of special education programs for individual students — compensatory education, help for the handicapped, the language-deficient, and the poor. The federal government provides a floor upon which the state and local governments build. This is targeted, special-purpose aid that goes to the needy in both the public and private schools. But the tax credit for private education translates into general assistance — a windfall for an institution rather than a helping hand for a deserving child.

Public school assistance programs follow from the mandate of Congress for equal educational opportunity in the public schools. This is not required of the private schools. These latter are selective

ERNEST F. HOLLINGS is a former governor of South Carolina (1959-63) who was elected to the U.S. Senate in 1966. He has had a long-time interest in education and serves on the Board of Trustees of Newberry College. Hollings was an early advocate of a single system of public schools in his state to replace the dual system based on race. © 1978, by Ernest F. Hollings.

"Clearly, [under Packwood-Moynihan] those with the greatest ability to pay would reap the benefits."

and generally choose the brightest, those without discipline problems or language problems, those from the higher income brackets, and those fleeing from the inner-city, integrated school. The public school, in contrast, must take all comers — regardless of background, regardless of special problems. Additionally, the public institution must abide by congressional laws and court decisions that the private school can ignore. Those who argue that public and private schools are directly competitive and that pupil performances can be directly compared ignore this basic difference. The public school is bound by both law and conscience to reach out to every child as a matter of his or her birthright. This is what public education is all about.

What is impressive is the record compiled by our public schools as they educate 90% of our youngsters, expand equal opportunity, and provide every American child the chance for a better future. The public schools have led the way.

In contrast, many private schools have been built for the specific purpose of closing the doors of economic and social opportunity. Some people call them "protest schools"; others call them segregation academies. They dot the landscape of my own back yard, and their purpose is clear to everyone. Sad to report, the best estimate is that nearly one of every five private schools is a protest school.

Packwood-Moynihan confers its benefits on 4.5 million private school students at the expense of 44.5 million public school children. Most of our private school student population is middle or upper class. In 1975 just 4% of all children from families with incomes of less than \$5,000 were enrolled in private schools; 17% of all children from families with incomes of about \$25,000 were in private schools; and 25% of those from families with incomes above \$50,000. Clearly, those with the greatest ability to pay would reap the benefits. The proverbial millionaire who pays no taxes would receive a \$500 (or \$250) check from Washington for sending his boy to Exeter, while the 89% of families whose incomes are below \$15,000 in the state of South Carolina would receive only 17% of the benefit to be paid out. That's unconscionable.

Exeter, meanwhile, boasts an endowment of \$60 million; Phillips-Andover has \$57 million; St. Paul's, \$45 million. The endowments, holdings, and properties of

many of our private schools are very great, and increasing public awareness of the extent of some of these holdings is one reason for the lack of public support for the tuition tax credit proposals.

We hear a lot of talk nowadays about cost containment and budget cutting. Clearly Senators Packwood and Moynihan are worried about neither. There is a cost explosion — yet another in the long line of budget-busters. The Congressional Budget Office estimates that, should this plan take effect, within just three years the elementary and secondary tuition tax credit would cost \$1.797 billion. This figure is, if anything, conservative. If tuitions are raised, or if more children attend private schools, the amount will go higher.

Certainly there is every incentive for the private schools to raise tuitions once this measure is implemented. Parents of children in private schools will have their expectations of a tax break raised high only to find themselves the conduits between the federal treasury and the private school. Common sense tells us that the private schools will raise tuitions to capture as much of this new money as they can. We need not blame them for trying. But should we provide the opportunity and open the treasury gates? And no one should be surprised if, farther down the road, politicians on the state level discover an opportunity for some federal money, too. I have served in state government. I know how easy it is to get around obstacles and amend state constitutions, and when dollars are at stake the action usually comes sooner rather than later. With over 90% of our children in public schools, the cost of a public school tuition tax credit would be astronomical.

Packwood-Moynihan means money and bureaucracy. Claiming a tax credit means authenticating the tax return; authenticating the return means commandeering the records of both the citizen and the school; commandeering records means another new bureaucracy; and bureaucracy means intrusion and soaring expenditure. We have been down that road so many times before that the scenery ought to look familiar. At least we ought to recognize the road signs. But somehow politicians never learn. The people, however, are onto the facts. In a nationwide Roper survey released last August, 64% of the American people op-

posed the tuition tax credit for private and parochial elementary and secondary education. And, interestingly, only 43% of the Catholics surveyed favored it, while 48% of them voiced their opposition.

Our education system cannot afford the kind of infighting that the tuition tax credit would inevitably bring between the supporters of our public and private schools. Each year at appropriations time they will square off in competition for the limited federal funds available. Once the tuition tax credit has its foot in the door, education civil war will be an annual affair. And because so many of the private schools are religious, the debates will devolve into religious wars as well.

I believe that Packwood-Moynihan should be defeated on policy grounds. It is an outlandish proposal that could only wreak havoc on our education system. The proponents know this. But, rather than address the questions of education policy or sound fiscal policy head-on, they hide behind the rhetoric of "anti-Catholic bigotry" as the reason this proposal failed to pass the Senate. That in fact is shameless pandering for purposes unrelated to the merit of this issue. They attempt to clothe opponents as "anti-Catholic bigots." This is simply unfounded. Consider the list of organizations that opposed Packwood-Moynihan. Are they religious bigots?

The list includes the American Civil Liberties Union; American Association of Colleges for Teacher Education; American Federation of Teachers, AFL-CIO; American Association for Health, Physical Education, and Recreation; American Association of School Administrators; American Ethical Union; American Federation of State, County, and Municipal Employees; American Humanist Association; American Jewish Congress; Americans for Democratic Action; A. Philip Randolph Institute; Association for Childhood Education International; Baptist Joint Committee on Public Affairs; Coalition of Labor Union Women; Council for Educational Development and Research; Council for Exceptional Children; Council of Chief State School Officers; Council of Great City Schools; Division of Homeland Ministries, Christian Church (Disciples of Christ); Federal Education Project of the Lawyers Committee on Civil Rights Under Law; Horace Mann League; Labor Council for Latin American Advancement; League of Women Voters; National Association for the Advancement of Colored People; National Association of Elementary School Principals; National Association for Hearing and Speech Action; National Association of Secondary School Principals; National Association of State Boards of Education; National Coalition for Public Education and Religious Liberty; National Committee for Citizens in Education; National Con-

gress of Parents and Teachers; National Council of Churches; National Council of Jewish Women; National Council of Senior Citizens; National Education Association; National School Boards Association; National Student Association; National Student Lobby; National Urban Coalition; National Urban League; Student National Education Association; Union of American Hebrew Congregations; Unitarian Universalist Association; United Auto Workers; United Methodist Church.

Just citing the list shows how ridiculous the religious bigotry charge is.

But let's review the legal precedents. The tuition tax credit is not only bad policy; it is patently unconstitutional, flying in the face of the establishment clause of the First Amendment and therefore violative of the Fourteenth Amendment also. The U.S. attorney general has written a formal opinion concluding that a tuition tax credit for families with children in private elementary and secondary schools is unconstitutional. That position is supported by most constitutional scholars, for the tuition tax credit proposed in this legislation is practically indistinguishable from the tax relief program that New York State enacted and which, in 1973, the Supreme Court held to be unconstitutional in *Committee for Public Education v. Nyquist*. And only two years ago the Supreme Court, in its decision in *Wolman v. Walter*, reaffirmed its earlier position. Although some scholars and some politicians may wish that those cases had been decided differently, most of them agree that, under those decisions, a tuition tax credit for elementary and secondary students is unconstitutional.

Senator Moynihan does not really dispute this conclusion. Last January he said, "Now I would say to you that this bill is unconstitutional, by which I do not mean that I predict the Court tomorrow would hold it so. I mean instead that a fair reading of our nation's history demonstrates that the First Amendment was never meant — until recently, never understood — to bar the sort of aid we propose."

This is an interesting viewpoint. It has much to commend it. For it gives each of us the freedom to make up our own minds about what the Constitution says. If we don't happen to like what the Supreme Court has ruled, we are free to ignore it — relying instead upon what we happen to deem to be a 'fair reading of our nation's history.' A school board might decide that a fair reading of this nation's history permits it to operate a dual school system — even though there once was a decision called *Brown v. Board of Education*.

I am as great a believer in liberty as Senator Moynihan. But Article III of the Constitution says that "The judicial

power of the United States shall be vested in one Supreme Court," and that "the judicial power shall extend to all cases . . . arising under the Constitution." Much as I would like to be free to declare my allegiance to Ernest F. Hollings's fair reading of our nation's history, I believe that Article III provides otherwise — and makes the Supreme Court the final arbiter of the Constitution.

Finally, I should note that in an article he wrote last spring for *Harper's*, Senator Moynihan relies for support in his interpretation of the First Amendment on that eminent constitutional scholar, Ulysses S. Grant, and that renowned source of constitutional guidance, the 1876 Republican platform. I had never before realized that, in the address by Grant that Senator Moynihan refers us to — remarks before the Army of Tennessee in Des Moines — the nation was receiving a legal disquisition of great authority. Nor had I realized that the politicians who drafted the election platform for the Republican Party in 1876 viewed themselves as resolving serious questions of constitutional law that might arise a century later.

One might think that, in determining what the First Amendment prohibits, a good starting place is recent Supreme Court decisions. Yet in his extended discussion of constitutional law in *Harper's*, Senator Moynihan makes only

the most fleeting reference to the two controlling Supreme Court decisions in this area. But in considering whether tuition tax credit legislation is constitutional, I look not to Ulysses Grant but to the Supreme Court. And I conclude — as has the attorney general — that this legislation clearly violates those decisions.

As a parent, a citizen, and an officeholder, I have always believed that public education is the best investment a nation can make. It develops a diversity, a competitiveness, a competence that is nowhere else available. Our public schools are run by over 16,000 local school boards, and theirs has always been the fundamental role. Those who pose the straw man of a public education monopoly have not traveled this land and breathed the diversity and the vitality of 107,272 public schools. No private school can boast this kind of diversity. The public school teaches the American Way as no other school can teach it. There is no substitute. Our public schools are and must remain the cornerstone of America's education system. This is not to deny or deprive private education, which can and should remain a vital part of our nation's education. But we are being asked now to discriminate in favor of the private, and what is left alone and unfunded is public education. All this to be performed by the public Congress! To borrow from Senator Moynihan's colorful rhetoric, this is horrendous, outrageous, and we shouldn't let them "get away with it." □